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and JOHN A. DELL'OSO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**GEORGE E. BARICH and LAURIE
ALDERMAN.**

Case 3:21-cv-00034-EMC

JOINT STATUS CONFERENCE STATEMENT

Date: June 28, 2022

Time: 2:30 p.m.

Location: Courtroom 5 – 17th Floor
450 Golden Gate Avenue, San Francisco, CA 94102
(Videoconference Only)

Judge: Hon. Edward M. Chen

Complaint filed: January 5, 2021

Trial date: December 12, 2022

CITY OF COTATI and JOHN A. DELL'OSO,

Defendants

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT pursuant to the [Standing Order for All Judges of the Northern District of California](#) and Civil Local Rule 16-9.

1 **1. Facts**

2 Plaintiffs' Contentions:

3 This case involves three occasions on which Defendants violated Plaintiffs' civil rights. On
 4 January 8, 2019, Dell'Osso presided over a regularly scheduled City Council meeting. Barich, who was
 5 out of town and wished to be heard at the meeting, appointed Alderman as his "attorney-in-fact" to read
 6 a written statement into the record in his absence. During the meeting's public comment period,
 7 Alderman was not allowed to speak on behalf of Barich or to read his statement into the record on his
 8 behalf. Mayor Dell'Osso, on advice of City Attorney Donoghue, stated to Alderman that she "would
 9 not be allowed to speak for George [Barich], due to the rules about proxy statements." However,
 10 Dell'Osso accepted Barich's written statement for inclusion into the meeting's written record.

11 On January 22, 2019, Dell'Osso presided over a regularly scheduled City Council meeting.
 12 Barich again appointed Alderman as his "attorney-in-fact" to present his testimony at the meeting. This
 13 time, Alderman filled out a speaker card for Barich. When his name was called, Alderman presented
 14 herself and a notarized copy of a power of attorney granting her the authority to speak on Barich's
 15 behalf in his absence. Dell'Osso asked for the advice of the City Attorney, who stated that the City's
 16 rules do not allow for speakers to present a power of attorney and comment for someone else. In
 17 response, Alderman told Dell'Osso and the City Attorney that they were violating Barich's civil rights
 18 and that they should reconsider their decision to not let her read his statement into the record in his
 19 place. Dell'Osso refused to allow Alderman to read the statement into the record. (Alderman admits
 20 that she was allowed to speak for Barich later at the City Council meeting of February 12, 2019, when
 21 Barich was present but suffering from a sore throat.)

22 On March 27, 2019, the City held a special meeting of the City Council. The meeting was held
 23 in the community room at the Cotati police station rather than the City Council chambers next door.
 24 Barich, who suffers from progressive hearing loss and tinnitus, often requires an electronic hearing-
 25 assist device at City Council meetings, which the City provides. A week before the special meeting,
 26 Barich requested an electronic hearing-assist device for his use at the meeting. The Cotati City Clerk
 27 assured Barich that he would be provided with a hearing-assist device for the special meeting.

1 At the outset of the meeting, the City Clerk provided Barich with an electronic hearing-assist
 2 device, indentifying it as an amplifier. However, it did not function inside the police station's
 3 community room. The clerk gave Barich a second device that also did not function. It is undisputed that
 4 the City's electronic hearing-assist devices could *never* work in the community room, as they were
 5 radio frequency receivers which had to be connected to the public-address system in the council
 6 chambers next door in order to function. No public-address system was used at the special meeting
 7 because the community room did not have one. City Clerk Berges and City Planner Harries
 8 acknowledged to Barich before the meeting that the hearing-assist devices were not working. Barich
 9 asked Berges to inform the Mayor of the problem, but the meeting continued. As a result, Barich was
 10 relegated to the side of the room. The chairs were arranged in a horseshoe pattern with the closed end
 11 toward the audience. City Council members Wendy Skillman and Mark Landman and Public Works
 12 Director Scott, who was there to speak, were facing away from Barich, making it impossible for him to
 13 follow along and participate in the discussions.

14 Barich reminded the City Council of his hearing disability, informed them that the council was
 15 not accommodating his disability, and requested that the meeting be moved to the council chambers
 16 next door where his hearing disability could be accommodated through the use of the public-address
 17 system. Dell'Osso denied Barich's request and suggested that he raise his hand and interrupt the
 18 meeting every time he was having trouble hearing the discussion. Barich replied to Dell'Osso that this
 19 was unreasonable. Dell'Osso answered that Barich could either stay under the circumstances or leave.
 20 Barich, unable to meaningfully participate after some 13 minutes, left the meeting.

21 The hostility of the Cotati City Councilmembers toward Barich has existed for years. See
 22 <http://cotaticityca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2052&Format=Minutes>, starting at 50.00 – At a September 25, 2018 City Council meeting in the City Council chambers,
 23 Skillman is the one pretending to play the violin and laughing while Barich speaks; Dell'Osso is the
 24 one who asks Barich a question and then shouts him down, claiming it was rhetorical; and then-Mayor
 25 Landman is the one who cuts off Barich's microphone and, tellingly, says, “We knew what his answer
 26 would be.”
 27

1 Contrast this with

2 <http://cotacityca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2253&Format=Minutes>

3 at 3:12 and 3:17:45 - On July 27, 2021, the City Council allowed a citizen, Marjorie Crump Shears,

4 to speak twice during a public input time after an agenda item. A new council member since November

5 2020, Ben Ford, interjected with, "Our rules only allow a speaker to speak one time on an issue. And

6 I'm concerned about any precedent that would set for future enforcement of that rule." Defendants have

7 admitted to this in discovery.

8 After having Barich's government tort claims timely filed and rejected, Plaintiffs filed the

9 instant action on January 5, 2021, asserting five claims: (1) violation of Barich's right to equal

10 protection under the Fourteenth Amendment against Dell'Osso; (2) violation of Alderman's freedom of

11 speech rights under the First Amendment at the January 8 and January 22 meetings against Dell'Osso;

12 (3) violation of Alderman's right to equal protection under the Fourteenth Amendment against

13 Dell'Osso; (4) unconstitutional policy, custom, or practice in violation of § 1983 pursuant to *Monell v.*

14 *Department of Social Services*, 436 U.S. 658 (1978), against the City; and (5) violation of Barich's

15 rights under the ADA, 42 U.S.C. §§ 12101–12213, against the City. The First Amended Complaint also

16 includes allegations regarding prior civil rights violations by the City and its agents, including a prior

17 federal action the City settled. It also includes prior false accusations by other Council members.

18 Defendants' Contentions:

19 Defendants' denials and admissions to Plaintiffs' allegations are set forth in the Defendants'

20 answer. Very briefly, to address what Defendants believe the Court is looking for here, and not as a

21 limitation on a Defendants' version of events, Defendants incorporate their statement from the previous

22 Joint Case Management Statement and emphasize the following new information that directly

23 addresses the basis for the Court's partial denial of the Defendant's Motion to Dismiss. Plaintiff

24 Alderman admitted in responses to interrogatories that the City informed her at the January 8, 2019 and

25 January 22, 2019 City Council meetings, as well as at numerous previous meetings, that she had the

26 right to say whatever she wished during her own speaking timeslot during the Citizen Business section

27 of the City Council meeting. Alderman admits that she was fully aware of that right, but nonetheless

28 chose not to read Mr. Barich's written statement during her own speaking timeslot.

1 Furthermore, Plaintiffs' original and amended complaints omit that she was allowed to read Mr.
2 Barich's statement at the next City Council meeting on February 12, 2019. Alderman denied this in her
3 original responses to interrogatories, but when confronted with the video evidence, admitted that she
4 had been so allowed, claiming that her memory is unreliable.

5 It is now clear that Ms. Alderman was expressly informed by the City and was fully aware that
6 she had the right to say whatever she wished during her own speaking timeslot, but decided not to read
7 Mr. Barich's statement during her own speaking timeslot, and to instead speak on other matters.

8

9 **2. Discovery**

10 The parties completed written discovery. Defendants have taken the depositions of Plaintiffs
11 Barich and Alderman, and corrections to the depositions were submitted to the court reporter. Plaintiffs
12 noticed the deposition of Defendant Dell'Osso for June 9, 2022, on less than 8 calendar days notice.
13 Defense counsel was not available and the parties agreed to reschedule later in the summer, dependant
14 upon defense counsel's trial schedule. Expert witness discovery is still underway. Plaintiffs have
15 designated two expert witnesses, a forensic audiological expert and a sound engineer. Defendants have
16 designated an expert witness who is an attorney specializing in municipal law, and the Plaintiffs will
17 submit a rebuttal expert report by the deadline of June 30, 2022.

18

19 **3. Settlement and ADR**

20 The parties meditated on November 22, 2021, with no success.

21 No other efforts to settle have taken place thus far.

23 Dated: June 21, 2022

/s/ Carleton L. Briggs

24 Counsel for Plaintiffs

26 Dated: June 21, 2022

/s/ Peter A. Urhausen

27 Counsel for Defendants

CERTIFICATION

I, Carleton L. Briggs, am the ECF User whose identification and password are being used to file this Joint Status Conference Statement. I hereby attest that Peter A. Urhausen, Esq. has concurred in this filing.

Dated: June 21, 2022

/s/ Carleton L. Briggs

Counsel for Plaintiff